

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

KIMBERLY GRIGGS,

Plaintiff,

vs.

DEPT. OF SOCIAL SECURITY,

Defendant.

CASE NO. 12cv620-MMA (KSC)

**ORDER GRANTING MOTION FOR  
LEAVE TO PROCEED IN FORMA  
PAUPERIS;**

[Doc. No. 2]

**DISMISSING COMPLAINT WITH  
LEAVE TO AMEND**

Plaintiff Kimberly Griggs filed this action on March 12, 2012, along with a motion for leave to proceed *in forma pauperis*. Plaintiff appears to be challenging the termination of her benefits under the Social Security Act. As discussed below, Plaintiff's complaint will be dismissed because it fails to state a claim. However, Plaintiff will be granted leave to file an amended complaint.

**MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS**

Plaintiff has filed a motion requesting leave to proceed *in forma pauperis*, without prepayment of the filing fee. Ordinarily, all parties instituting any civil action, suit or proceeding in a district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* 28 U.S.C. § 1914(a). An action may proceed despite a plaintiff's failure to prepay the entire fee only if the plaintiff is granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). "To proceed in

1 *forma pauperis* is a privilege not a right.” *Smart v. Heinze*, 347 F.2d 114, 116 (9th Cir. 1965).

2 Plaintiff states that she is currently unemployed, and has been unemployed for approximately  
3 two decades. She receives \$200 per month in food stamps, but has no other income or assets.  
4 Plaintiff has demonstrated she lacks the financial resources to pay the required filing fee. As such,  
5 the Court finds that Plaintiff satisfies the requirements to proceed *in forma pauperis* and **GRANTS**  
6 her motion.

#### 7 SUA SPONTE SCREENING OF PLAINTIFF’S COMPLAINT

##### 8 *I. Screening Standard*

9 Pursuant to Title 28 of the United States Code section 1915(e)(2), the Court must conduct an  
10 initial review of the complaint for sufficiency to state a claim. The Court must dismiss a complaint  
11 or portion thereof if the court determines that the action is legally “frivolous or malicious,” fails to  
12 state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is  
13 immune from such relief. 28 U.S.C. § 1915(e)(2). If the Court determines that the complaint fails to  
14 state a claim, leave to amend may be granted to the extent that the deficiencies of the complaint can  
15 be cured by amendment.

16 A complaint must contain “a short and plain statement of the claim showing that the pleader  
17 is entitled to relief . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but  
18 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,  
19 do not suffice.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009), citing *Bell Atlantic Corp. v.*  
20 *Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient factual matter, accepted as  
21 true, to ‘state a claim that is plausible on its face.’” *Ashcroft v. Iqbal*, 129 S.Ct. at 1949 (quoting  
22 *Twombly*, 550 U.S. at 555). While factual allegations are accepted as true, legal conclusion are not.  
23 *Id.* A complaint, or portion thereof, should only be dismissed for failure to state a claim upon which  
24 relief may be granted if it appears beyond doubt that plaintiff can prove no set of facts in support of  
25 the claim or claims that would entitle him to relief. *See Hishon v. King & Spalding*, 467 U.S. 69, 73  
26 (1984), citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *see also Palmer v. Roosevelt Lake Log*  
27 *Owners Ass’n*, 651 F.2d 1289, 1294 (9th Cir. 1981).

28 In reviewing a complaint under this standard, the Court must accept as true the allegations of

1 the complaint in question, *Hospital Bldg. Co. v. Trustees of Rex Hospital*, 425 U.S. 738, 740 (1976),  
 2 construe the *pro se* pleadings liberally in the light most favorable to the Plaintiff, *Resnick v. Hayes*,  
 3 213 F.3d 443, 447 (9th Cir. 2000), and resolve all doubts in the Plaintiff's favor, *Jenkins v.*  
 4 *McKeithen*, 395 U.S. 411, 421 (1969).

## 5 2. Plaintiff's Complaint

6 Plaintiff's complaint is single page, handwritten, in which she indicates her benefits were  
 7 terminated due to her incarceration. She states that she re-applied for benefits, but her application(s)  
 8 was denied. According to Plaintiff, she previously received benefits from 1991 through 2001, and in  
 9 2005.

10 As Rule 8(a) states, a complaint must contain "a short and plain statement of the claim." The  
 11 rule expresses the principle of notice-pleading, whereby the pleader need only give the opposing  
 12 party fair notice of a claim. *Conley v. Gibson*, 355 U.S. at 45-46. Rule 8(a) does not require an  
 13 elaborate recitation of every fact a plaintiff may ultimately rely upon at trial, but only a statement  
 14 sufficient to "give the defendant fair notice of what the plaintiff's claim is and the grounds upon  
 15 which it rests." *Id.* at 47. As noted above, detailed factual allegations are not required, but  
 16 "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,  
 17 do not suffice." *Ashcroft v. Iqbal*, 129 S.Ct. at 1949.

18 In this case, Plaintiff has indicated that she is appealing a denial of her application(s) for  
 19 benefits, but she has not provided any substantive reasons for doing so, nor has she identified any  
 20 errors in any decision rendered by an Administrative Law Judge ("ALJ"). Nor has Plaintiff  
 21 provided any dates related to her application or applications for benefits and the denials related  
 22 thereto. Therefore, it is impossible for the Court to determine whether Plaintiff pursued benefits  
 23 through the required and necessary administrative channels, and if she did, whether her filing is  
 24 timely. Upon receiving a denial of benefits, a plaintiff has sixty days to file an appeal with the  
 25 Appeals Council. 20 C.F.R. §§ 404.967, 404.968. When the Appeals Council reviews the case, it  
 26 will either affirm, modify, or reject the ALJ's recommendation. 20 C.F.R. § 404.979. It may also  
 27 remand the case. 20 C.F.R. § 404.977. The Appeals Council's decision is binding unless a party  
 28 files an action in federal district court within sixty days of the Appeals Council's decision. 20

1 C.F.R. §§ 422.210, 404.981. As such, prior to filing an appeal in federal court, Plaintiff must  
 2 establish that an appeal with the Appeals Council was filed. Any complaint filed in federal district  
 3 court must then be filed within sixty days of the Appeals Council's decision. Plaintiff has failed to  
 4 demonstrate that she filed an appeal with the Appeals Council, and makes no mention of its decision  
 5 or the outcome. Any amended complaint must establish that the case is properly before this Court  
 6 and that it is timely.

7 3. *Leave to Amend the Complaint*

8 Although Plaintiff's complaint contains deficiencies as outlined above, the Court will grant  
 9 Plaintiff leave to file an amended complaint. If Plaintiff decides to file an amended complaint, she is  
 10 reminded that an amended complaint supersedes the original complaint. *Forsyth v. Humana, Inc.*,  
 11 114 F.3d 1467, 1474 (9th Cir. 1997); *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987). The Court  
 12 advises Plaintiff that "[a]ll causes of action alleged in an original complaint which are not alleged in  
 13 an amended complaint are waived." *King*, 814 F.2d at 567, citing *London v. Coopers & Lybrand*,  
 14 644 F.2d 811, 814 (9th Cir. 1981); accord *Forsyth*, 114 F.3d at 1474.

15 CONCLUSION

16 Based on the foregoing, the Court **DISMISSES** Plaintiff's complaint without prejudice and  
 17 with leave to amend. Plaintiff's amended complaint is due within thirty (30) days of the date of this  
 18 Order.

19 **IT IS SO ORDERED.**

20  
 21 DATED: March 16, 2012

22 

23 Hon. Michael M. Anello  
 24 United States District Judge